

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,195

601

In Re:

BURKE JUSTICE, JR., Adult Ward

*APPEAL FROM AN ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA*

BRIEF FOR APPELLANT AND JOINT APPENDIX

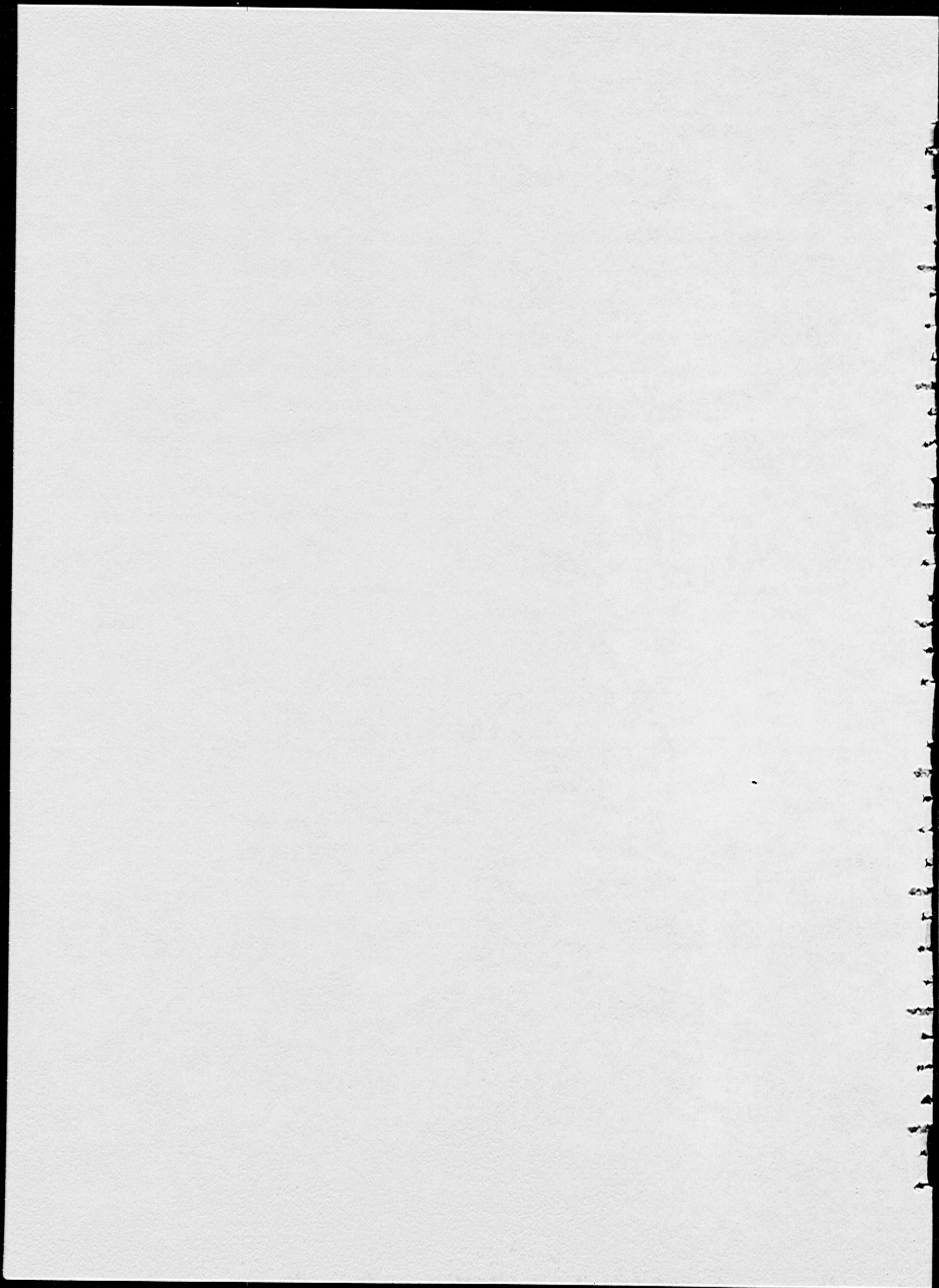
United States Court of Appeals
for the District of Columbia Circuit

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November 25, 1968



(i)

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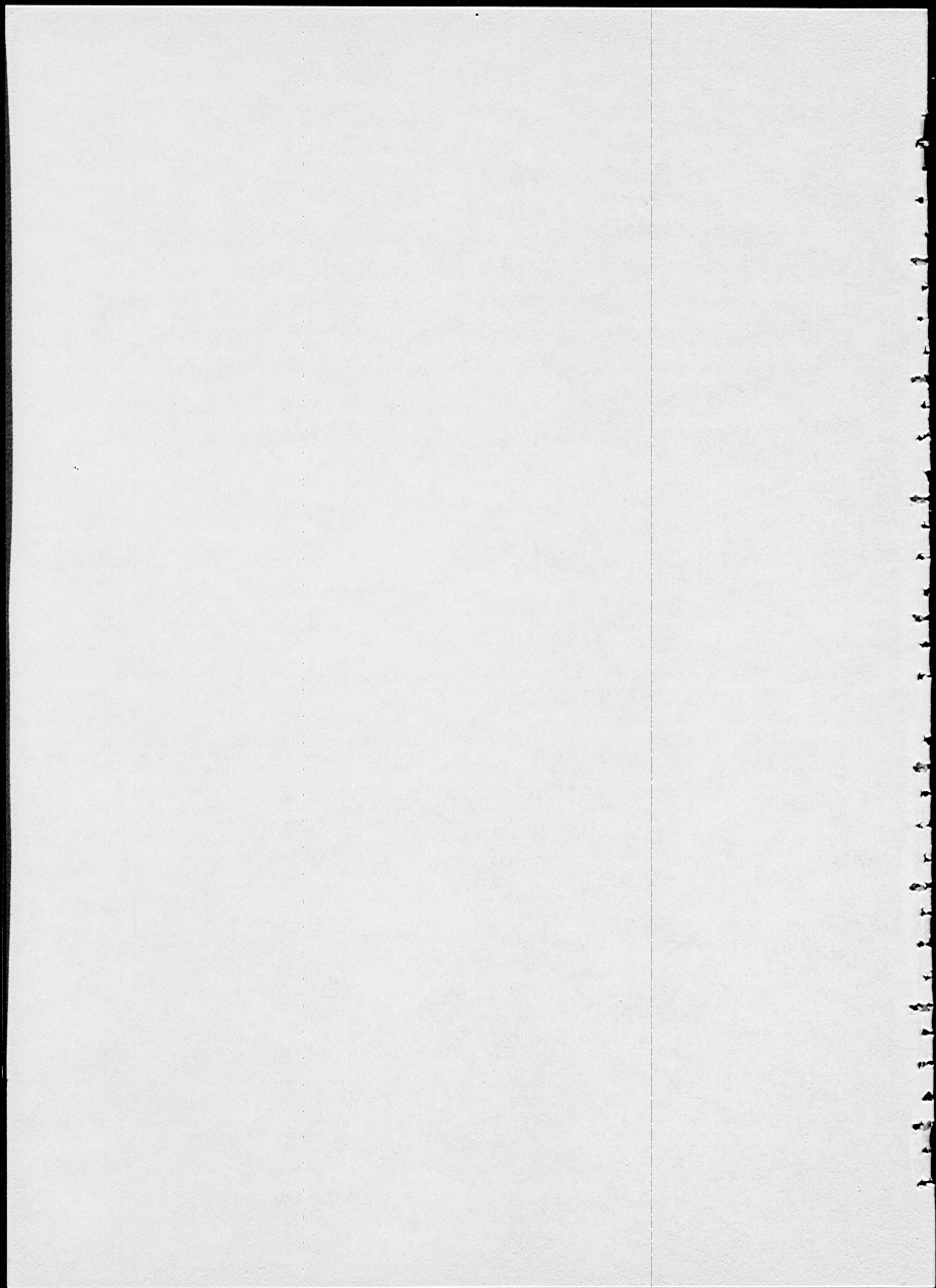
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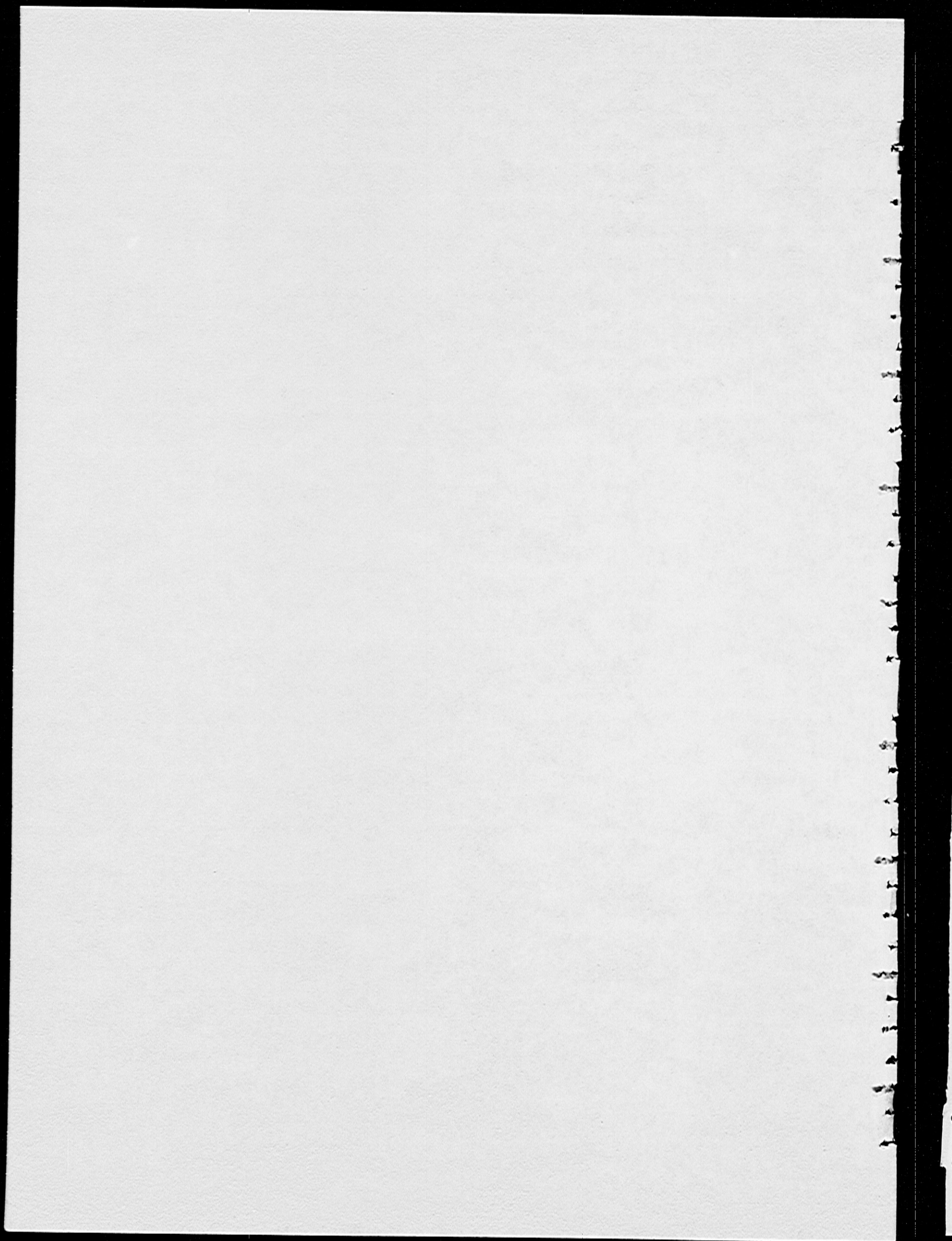
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*APPEAL FROM AN ORDER OF THE UNITED STATES
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BRIEF FOR APPELLANT

STATEMENT OF ISSUES PRESENTED FOR REVIEW

In the opinion of appellant, the issues presented for review are:

1. Whether it was an abuse of discretion and reversible error for the District Court to have denied appellant's petition, filed in the conservatorship proceeding, for a direction from the District Court requiring the conservator of the estate of Burke Justice, Jr., an adult ward, to satisfy out of the said ward's estate, a judgment previously obtained by appellant against the said ward in the District of Columbia Court of General Sessions, when it appeared from the record that there were sufficient funds in the said ward's estate to satisfy the judgment.

2. Whether it was an abuse of discretion and reversible error for the District Court to have denied appellant's petition, filed in the conservatorship proceeding, for a direction from the District Court requiring the conservator of the estate of Burke Justice, Jr., an adult ward, to satisfy out of the said ward's estate a judgment previously obtained by appellant against the said ward in the District of Columbia Court of General Sessions, when there was no showing by the conservator or finding by the District Court that payment of appellant's judgment in whole or part out of the ward's estate, would not allow a sufficient maintenance to be reserved to the ward.

In accordance with General Rule 8(d) of the Rules of this Court, the Court is advised that the pending case has not been previously before this Court under the same or a similar title.

JURISDICTIONAL STATEMENT

This Court has jurisdiction hereof pursuant to 28 U.S.C. § 1291 (1964).

APPELLANT'S STATEMENT OF THE CASE

This case is before this Court to review an order entered June 6, 1968, in the United States District Court for the District of Columbia (Joint Appendix, page 20) denying appellant's application for an order directing the conservator of the estate of Burke Justice, Jr., an adult ward, to pay a judgment obtained by the appellant against said adult ward, entered on December 27, 1967, in the District of Columbia Court of General Sessions. Appellant's principal contention is that the Court below abused its discretion in denying appellant's application, when it appeared of record that there were sufficient funds in the ward's estate to satisfy appellant's judgment. Appellant further contends in the alternative that without regard to

the amount of funds in the ward's estate, the District Court below abused its discretion in denying appellant's petition, when there was no showing by the conservator or finding by the District Court that payment of appellant's judgment out of the ward's estate, would not allow a sufficient maintenance to be reserved to the ward.

The facts involved in connection with appellant's application are as follows:

(1) On December 7, 1967, in Civil Action No. GS 14690-66 in the District of Columbia Court of General Sessions, there was entered a judgment in favor of appellant, The First National Bank of Washington (sometimes hereinafter the "Bank"), and against Burke Justice, Jr., an adult ward, in an amount of \$1,415, with interest at the rate of 6% per annum from December 7, 1967, and costs of \$3.00. A certified copy of said judgment is annexed to the Bank's petition and made a part thereof, marked Exhibit A (Joint Appendix, page 6).

(2) The ward, Burke Justice, Jr., was at all times represented by counsel in the above proceeding.

(3) The judgment entered in favor of the Bank has not been paid.

(4) The judgment entered in favor of the Bank arose out of certain checks fraudulently drawn by the ward, Burke Justice, Jr., on his conservator's account, during the period from on or about August 8, 1963 to on or about October 3, 1963, which checks were erroneously honored by the Bank, and resulted in the Bank's liability therefor to the conservator.

(5) On or about January 4, 1968, the Bank paid to the conservator the amount of \$1,418, representing the proceeds of the checks honored by the Bank and fraudulently drawn by the ward, in the amount of \$1,415, and costs of suit in the amount of \$3.00.

(6) By letter dated January 4, 1968, addressed to John A. Shorter, Jr., Esq., conservator of the estate, demand was made on the conservator for payment of the Bank's judgment against the ward. A copy of said demand is annexed to the Bank's petition, marked Exhibit B (Joint Appendix, page 7).

(7) By letter dated January 9, 1968, the conservator John A. Shorter, Jr., refused to pay the Bank's judgment against the ward, on the ground that as conservator of the ward's estate, he considered himself without authority to disburse funds without direction from the District Court. A copy of that letter is annexed to the Bank's petition, marked Exhibit C (Joint Appendix, page 8).

(8) By letter dated January 10, 1968, the Bank's attorney requested the conservator to petition the District Court for the prior direction which the conservator considered necessary to pay the ward's debt to the Bank. A copy of that letter is annexed to the Bank's petition, marked Exhibit D (Joint Appendix, page 9).

(9) The conservator refused to petition the District Court for the direction he considered necessary. Following such refusal, the Bank filed its petition in the conservatorship proceeding on February 15, 1968 (Joint Appendix, page 3).

(10) At the time of filing of the Bank's petition, there were sufficient funds in the ward's estate to satisfy the Bank's judgment in full. The cash balance in the estate as of December 31, 1967, amounted to \$593.75 (see Report of the Auditor filed March 8, 1967, at Joint Appendix, page 22); after payment of commissions and auditing charges, and including the sum of \$1,418 received by the estate on January 4, 1968, the Auditor's Report shows a cash balance of \$1,864.14, exclusive of subsequent collections (see Report of the Auditor, paragraph 10, at Joint Appendix, page 26).

(11) The Bank's petition was answered by Dorsey Evans, Esq., attorney for Marguerite Justice, successor conservator, opposing the petition, essentially on the ground that the Bank's negligence in honoring the checks involved precludes it from recovering on its judgment (Joint Appendix, page 10).

(12) On March 26, 1968, Judge Matthew F. McGuire filed in the conservatorship proceedings a paper captioned "Memorandum to the Clerk Addressed to the Attention of Counsel for Petitioner and Respondent" requesting the parties to answer certain questions with respect to how a judgment may be secured and satisfied against an incompetent, and with respect to the nature of the ward's disability (Joint Appendix, page 11). Memoranda in response to the Court's Memorandum were filed by the parties on April 3, 1968 (Joint Appendix, page 12), April 12, 1968 (Joint Appendix, page 15), and May 3, 1968 (Joint Appendix, page 17).

(13) On June 6, 1968, the District Court entered an Order, captioned "Memorandum to the Clerk", denying the Bank's application for payment (Joint Appendix, page 20).

(14) Appellant filed its Notice of Appeal on July 3, 1968, and within the time provided by Rule 4, Federal Rules of Appellate Procedure (Joint Appendix, page 21).

(15) No *lis pendens* was filed in accordance with section 21-1507, District of Columbia Code (1967 ed.), and accordingly, at no time was the ward in a position to avoid contracts entered into by him, on the basis of his disability.

(16) It appears from previous annual accounts filed by the conservator in the conservatorship pro-

ceeding, that the ward had previously drawn "bad checks", and that in each instance the conservator made restitution to the holders thereof with prior and/or subsequent approval of the District Court (see e.g., Third Annual Account filed November 25, 1964, showing redemption of bad checks from A & P Supermarket, Suburban Accounts Management Corporation, Bolling Air Force Base Exchange, and U.S. Treasurer, Bolling Air Force Base).

ARGUMENT

I.

IT WAS AN ABUSE OF DISCRETION AND REVERSIBLE ERROR FOR THE DISTRICT COURT TO DENY APPELLANT'S PETITION WHEN IT APPEARED FROM THE RECORD THAT THERE WERE SUFFICIENT FUNDS IN THE WARD'S ESTATE TO SATISFY APPELLANT'S JUDGMENT AGAINST THE WARD.

- A. Appellant's judgment against the ward is valid and enforceable in accordance with its terms; the District Court had no discretion to relieve the ward from the necessary incidents of that judgment, including appellant's right to payment of its judgment out of the ward's property.

The order of the District Court from which this appeal is taken, captioned "Memorandum to the Clerk", entered June 6, 1968 (Joint Appendix, page 20), acknowledges that the District Court "has no authority to open or vacate a judgment of the Court of General Sessions of the District of Columbia." Yet, the District Court denied the Bank's application for payment of the judgment out of the ward's property, without grounds, stating merely that "on the facts of this case", and in the exercise of its "authority of a plenary and continuing character over the conservatorship and the conservator", the application would be denied. Conceding the District Court's "authority of a plenary and continuing character over

the conservatorship and the conservator", appellant is unable to understand upon what basis the District Court (1) acknowledge the validity of a judgment of the Court of General Sessions, and (2) deny the claim of appellant as judgment creditor, to payment of its judgment out of the ward's property, in view of the established right of a judgment creditor to compel payment of his judgment out of his judgment debtor's property.¹

Pursuant to Section 21-1502, District of Columbia Code (1967 ed.), a conservator appointed by the District Court "shall have the charge and management of the property of the person [i.e. ward] subject to the direction of the court." It follows that after the appointment of a conservator, the ward is relieved of the right to manage his property, including specifically the right to pay any judgment that may be entered against him, and any such judgment may be paid only at the direction of the conservator. Since the conservator's charge and management of his ward's property is "subject to the direction of the court", it follows also that such judgment may not be paid without authority of the District Court, and if the conservator refuses to petition the District Court for authority to satisfy a judgment secured against his ward, the judgment creditor involved has no choice but to petition the District Court directly, as was done in this case.

Appellant contends that the District Court has no discretion but to require the judgment to be satisfied, to the extent there is property in the ward's estate from which it may be satisfied. If the

¹Pursuant to sections 15-301 *et seq.*, District of Columbia Code (1967 ed.), judgment creditors are given the right to cause the issuance of a writ of execution, pursuant to which the United States Marshal is directed to levy on the judgment debtor's property and cause the same to be sold in satisfaction of the judgment. Although no execution was sought by appellant on its judgment in view of the pendency of the conservatorship proceeding, that fact should not alter appellant's right to satisfaction out of the ward's property, which right is a necessary incident of the judgment entered in its favor.

judgment is valid, the judgment debtor's property is necessarily subject to the claim represented by that judgment.² Under the principles of *Erie R. Co. v. Tomkins*, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188, 114 A.L.R. 1487 (1938) and its progeny, and under the doctrine of *res judicata*, the District Court was bound to give effect to appellant's judgment, and to require the conservator to pay the same out of the ward's property. Any other conclusion would relieve the ward from the necessary incidents of the judgment entered against him, and in effect amount to a holding that the judgment is void.³ Without a right to payment out of the ward's estate, appellant would have no means to satisfy its judgment during the pendency of the conservatorship, despite the existence of property out of which payment may be made.

In connection with the foregoing, reference is made to the case of *Shumaker, et al. v. Bohrofen, et al.*, 217 Iowa 34, 250 N.W. 683 (1933). Although the Supreme Court of Iowa dissolved an attachment issued against the estate of an adult ward, based upon a

²That a conservator has been appointed does not alter the fact that it is and remains the ward's property over which the conservator exercises control. Appellant sees no basis in the statutory or decisional law that suggests that upon a conservator's appointment, the ward's property becomes property of the conservator, in which the ward has merely an equitable interest. But even if title to the ward's property were deemed to be in the conservator, it is established that a judgment creditor may reach a judgment debtor's equitable interests in property just as it may reach his legal interests. Section 15-313, District of Columbia Code (1967 ed.).

³Appellant will concede that certain classes of property are exempt from attachment, levy, or seizure under judicial process: e.g., in certain cases, property in *custodia legis*; or other property specifically exempted by law, as property specified in sections 15-501 *et seq.*, District of Columbia Code (1967 ed.). However, no attachment, levy or other judicial seizure is involved in this case. The question is only whether the United States District Court for the District of Columbia may in the circumstances of this case and in view of its control over the conservatorship proceeding, refuse to give effect to a judgment of the District of Columbia Court of General Sessions, where no jurisdictional or other defect in the judgment is shown.

judgment entered against the ward, the court stated as follows:

"There is nothing in our previous discussions which forbids a claimant from seeking an adjudication of his claim in the district court, as such, and in a purely personal action. *Such adjudication being had, it becomes the duty of the probate court to direct the guardian to pay the claim.*" 250 N.W., at p. 685 (emphasis added).

The Court also stated:

"To permit a claimant to prove or adjudicate his case in either forum [i.e., the probate court or a court of general jurisdiction], *and to impose upon the probate court the duty to order payment by the guardian*, conserves to the creditor every substantial right which is reasonably available in the nature of the case. If the estate of the ward is solvent, the order of the court directing the guardian to pay is an adequate remedy." 250 N.W., at page 686 (emphasis added).

The Court also quotes with apparent approval from one of its earlier decisions, *Coffin v. Eisiminger*, 75 Iowa 30, 39 N.W. 124, 125, as follows:

"All money should be paid out under the direction of the court. *Bates v. Dunham*, 58 Iowa 310, 12 N.W. 309. . . . It is true that the same court rendered the judgment [against the ward and the guardian as garnishee] and entered the order [order directing the guardian to pay], but in one case it was acting as a court of general civil jurisdiction, while in the other it was acting as a probate court. In the first case the probate jurisdiction was neither invoked nor exercised. It was necessary for the probate court at some time to act upon the matter of using money to pay the judgment. Whether this could have been anything

more than a matter of form, in view of the fact that judgment had already been rendered, we need not determine. *It was the duty of the guardian to pay the judgment under the direction of the probate court. He failed to pay the judgment, and neglected to ask the instruction of the probate court in regard to it. Under these facts it was proper for plaintiff to obtain an order to compel the guardian to perform his duty.*" 250 N.W. at 685. (emphasis added).

Appellant submits that the principles stated by the Iowa Supreme Court as set out in the opinions cited above are correct, and should be followed by this Court. Following such principles, the District Court (exercising, essentially, jurisdiction in the nature of probate jurisdiction), should have directed the conservator to pay appellant's claim, to the extent of available funds in the ward's estate.

There can be no doubt the District Court was possessed of the authority to require payment, not only by virtue of the provisions pertaining to conservatorships generally,⁴ but pursuant to District of Columbia Code Section 21-144 (pertaining to property of infants under guardianship), that provides as follows:

"When an infant is entitled to real or personal estate in the District of Columbia which is liable to a mortgage, trust, or lien, *or is in any way charged with the payment of money*, the court may decree in the case as if the infant were of full age." (Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1, eff. Jan. 1, 1966) (emphasis added).

⁴Section 21-1503 empowers the conservator "to collect all debts due the person, and *upon authority of the court* to adjust and settle all accounts owing by him [i.e., the ward]." (emphasis added.)

Pursuant to section 21-1504, District of Columbia Code, the District Court "has the same powers with respect to the property of a person for whom a conservator has been appointed as it has with respect to the property of infants under guardianships." It follows that section 21-144 set forth above is applicable to the questions raised on this appeal, and that pursuant thereto, the District Court was authorized to direct payment to be made out of the ward's estate. In view of the limits of discretion of the District Court, as set out above, appellant believes it was not merely authorized, but was bound to make such direction in the circumstances here presented.

B. Appellant's judgment was properly entered and is not subject to challenge in the District Court or in this Court on the ground of the ward's disability.

The conservator argued in the District Court that appellant's judgment against the ward was improperly entered, by reason of the appointment of a conservator for the ward, and the finding necessarily made in connection with the appointment, that the ward suffered a disability. However, that argument ignores Section 21-1507, District of Columbia Code (1967 ed.), that provides for the filing of a *lis pendens* if it is desired to avoid the contracts of a person for whom a conservator has been appointed. In the case of Burke Justice, Jr., no *lis pendens* was filed with the Recorder of Deeds as provided, and the conservator may therefore not be heard to argue the ward's right to avoid the contracts made by him. The District of Columbia Court of Appeals so concluded in the case of *Edmunds v. Equitable Savings & Loan Association*, D.C. App. No. 3936, 94 Wash. Law Reporter 2033, 223 A.2d 630 (1966), finding that the Maryland statute (almost a verbatim copy of the District of Columbia statute) speaks in terms of "inability" rather than "incompe-

tency", and that there was absent any language indicating that the appointment of a conservator *ipso facto* relieves the ward of his capacity to contract. If a ward's contracts are enforceable, it follows judgment may be entered with respect to his contracts. Moreover, the ward was at all times represented by competent counsel, and no appeal was taken from the judgment entered against him.

In these circumstances, no basis has been shown that would permit the District Court or this Court to set aside the judgment entered against the ward, or to refuse enforcement thereof.

C. Appellant's alleged negligence in honoring the checks is irrelevant to its right to payment of its judgment out of the ward's property.

Appellee made the argument in the District Court below that appellant's negligence should bar its claim for payment out of the ward's estate. However, appellant contends that that question (i.e., of negligence), is no longer in issue, judgment having been entered in the Court of General Sessions. But even if the District Court would be permitted to substitute its judgment for the judgment entered, and to consider the matter *de novo*, it is appellant's contention that the ward's actions (i.e., drawing "bad checks") constitute a far more serious offense than appellant's breach of duty, and that to affirm the action of the District Court will therefore work a substantial injustice. If the decision of the District Court is affirmed, not only will the ward Burke Justice, Jr., have been permitted to expend the proceeds of the checks involved, for his own, and it appears, his family's purposes,⁵ but appellant will have been required to make restitution to the conservator for these same amounts, which amount may again be expended by the ward, with the result

⁵I.e., for obligations with respect to which the estate may have been liable if proper application had first been made.

that the ward will have been rewarded twice for his own wrongdoing, at the expense of appellant.

D. There were sufficient funds in the ward's estate to satisfy the Bank's judgment in full.

There were sufficient funds in the ward's estate to satisfy the Bank's judgment in full, as is evidenced by (a) payment by the Bank to the conservator on January 4, 1968, of \$1,418.00 to satisfy the Bank's liability to the conservator, and (b) an existing cash balance in the estate of \$593.75 as of December 31, 1967, as set forth in the Report of the Auditor dated March 8, 1968 (Joint Appendix, page 22). After payment of commissions and auditing charges, and including the payment of \$1,418 received from the Bank, the Auditor's Report shows a balance of \$1,864.14, exclusive of subsequent collections (see paragraph 10, Report of the Auditor, at Joint Appendix, page 26). In view of the above, appellant can see no basis for the District Court's exercise of discretion pursuant to which the requested direction for payment was not given.

II.

IT WAS AN ABUSE OF DISCRETION AND REVERSIBLE ERROR FOR THE DISTRICT COURT TO DENY APPELLANT'S PETITION WHEN THERE WAS NO SHOWING BY THE CONSERVATOR OR FINDING BY THE DISTRICT COURT THAT PAYMENT OF APPELLANT'S JUDGMENT OUT OF THE WARD'S ESTATE WOULD NOT ALLOW A SUFFICIENT MAINTENANCE TO BE RESERVED TO THE WARD.

Appellant's first argument is that under applicable principles of comity and *res judicata*, the District Court had no discretion to relieve the ward from the necessary incidents of the judgment entered against him, absent a showing of fraud or mistake in connection with the entry of judgment; that the District Court was bound

to recognize the judgment entered against the ward; and therefore that it was bound to order the judgment paid out of the ward's property. In the alternative, appellant requests this Court to rule that the District Court had no discretion to refuse to authorize and direct payment of appellant's judgment, absent a finding that payment of appellant's judgment would not allow a sufficient maintenance to be reserved to the ward.

Appellant has not found any decisional authority in this jurisdiction to support its alternative argument. However, it is suggested in view of the purposes of the statutory provisions relating to the appointment of conservators, that the District Court's discretion to refuse to authorize payment of just claims against a ward, should at a minimum be limited to cases in which a finding is made that payment of such claims out of the ward's estate would not allow reserving a sufficient maintenance to the ward.

Pursuant to section 21-1501 District of Columbia Code (1967 ed.), conservators may be appointed of the property of an adult residing in the District of Columbia, who is unable, "by reason of advanced age, mental weakness not amounting to unsoundness of mind, mental illness, as the latter term is defined in section 21-501, or physical incapacity, properly to care for his property. . . ." The purpose of the statute is clearly to conserve the property of the persons involved, and *in order to ensure a sufficient future maintenance for such persons (and their dependents), and to avoid the possibility that such persons should become dependents of the State, as a result of their disability to care for their property.* The right of adult persons to have control of their property may be limited by the State precisely because of its interest in preventing dependencies on the State. Without such interest, appellant suggests, the State would have no constitutional basis for limiting such right.

If the basis of the provisions of the District of Columbia Code pertaining to the appointment of conservators, is to provide, to the extent the ward has property or income, for the future maintenance of the ward and his dependents, it follows that to the extent the ward has property or income that exceeds the amount necessary in order to ensure such maintenance, such property or income may properly be expended to satisfy just claims against the ward. Without a finding that a sufficient maintenance may not be reserved, the District Court would be bound to give effect to the just claims of the ward's creditors, and to authorize satisfaction of such claims out of the ward's estate.

Although appellant has found no decisional authority in the District of Columbia to support its alternative argument, reference is made to the following statement in 25 Am. Jur., GUARDIAN AND WARD, section 78:

"§ 78. PAYMENT OF DEBTS. Guardians usually have the important power and duty of paying, from the funds in their hands, *all just debts which are due from their wards*. In some jurisdictions, it is by statute made the duty of the guardian to pay debts of the ward out of his personal estate and the income of his real estate, if sufficient, and if not, then out of his real estate. In most jurisdictions, the property of an infant or incompetent under guardianship is not subject to attachment or garnishment, but the proper course to pursue where one has a claim or judgment against the estate of a ward is to apply to the court having a jurisdiction for payment thereof. *Usually, however, the court, before making an order for the payment of debts or allowing to a committee or guardian sums already applied to him to that purpose, will reserve a sufficient maintenance for the ward.*" (emphasis added).

If a determination is made with regard to the ward's future maintenance, it is suggested that this Court may notice that the periodic income of the ward's estate is the sum of \$381 per month; that the authorized monthly expenditures amount to \$260 per month; that there remains a cash balance in the ward's estate; and that the ward owns and maintains an automobile. It appears to follow that the ward's estate is sufficient to pay appellant's judgment, without jeopardizing the ward's maintenance.

CONCLUSION

For the reasons set forth above, this Court should reverse the Order of the District Court entered on June 6, 1968, and remand with directions requiring the District Court to order the conservator to pay out of the ward's estate, appellant's judgment against the ward.

Respectfully submitted.

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STATUTES, RULES AND REGULATIONS INVOLVED

Title 21, Chapter 15, District of Columbia Code (1967 ed.)

§ 21-1501. Appointment of conservators

When an adult residing in or having property in the District of Columbia is unable, by reason of advanced age, mental weakness not amounting to unsoundness of mind, mental illness, as the latter term is defined by section 21-501, or physical incapacity, properly to care for his property, the United States District Court for the District of Columbia may, upon his petition or the sworn petition of one or more of his relatives or any other person or persons, appoint a fit person to be conservator of his property. (Sept. 14, 1965, 79 Stat. 774, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

§ 21-1502. Filing of petition; requirements; time and place of hearing; appointment of guardian ad litem

(a) Pursuant to the filing of the petition under section 21-1501, the court shall fix a time and place for a hearing; and shall cause at least 14 days' notice thereof to be given to the person for whom a conservator is sought to be appointed, if he is not the petitioner, and to such other persons as the court directs. The petition shall include, among other things—

- (1) the reasons for the appointment of a conservator;
- (2) the name and address of the person for whom the conservator is sought;
- (3) the date and place of his birth, if known; and
- (4) the names and addresses of the nearest known heirs at law, or the next of kin, if any.

(b) The court may appoint a disinterested person to act as guardian ad litem in a proceeding under this section. Upon a finding that the person for whom the conservator is sought is incapable of caring for his property, the court shall appoint a conservator who shall have the charge and management of the property of the person subject to the direction of the court. (Sept. 14, 1965, 79 Stat. 774, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

§ 21-1503. Bond; powers and duties

The conservator before entering upon the discharge of his duties shall execute an undertaking with surety to be approved by the court in such amount as the court orders, conditioned on the faithful performance of his duties as conservator. He shall have control of the estate, real and personal, of the person for whom he has been appointed conservator, with power to collect all debts due the person, and upon authority of the court to adjust and settle all accounts owing by him, and to sue and be sued in his representative capacity. He shall apply such part of the annual income and of the principal of the estate as the court authorizes to the support of the person and the maintenance and education of his family and children; and shall in all other respects perform the same duties and have the same rights and powers with respect to the property of the person as have guardians of the estates of infants. (Sept. 14, 1965, 79 Stat. 775, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

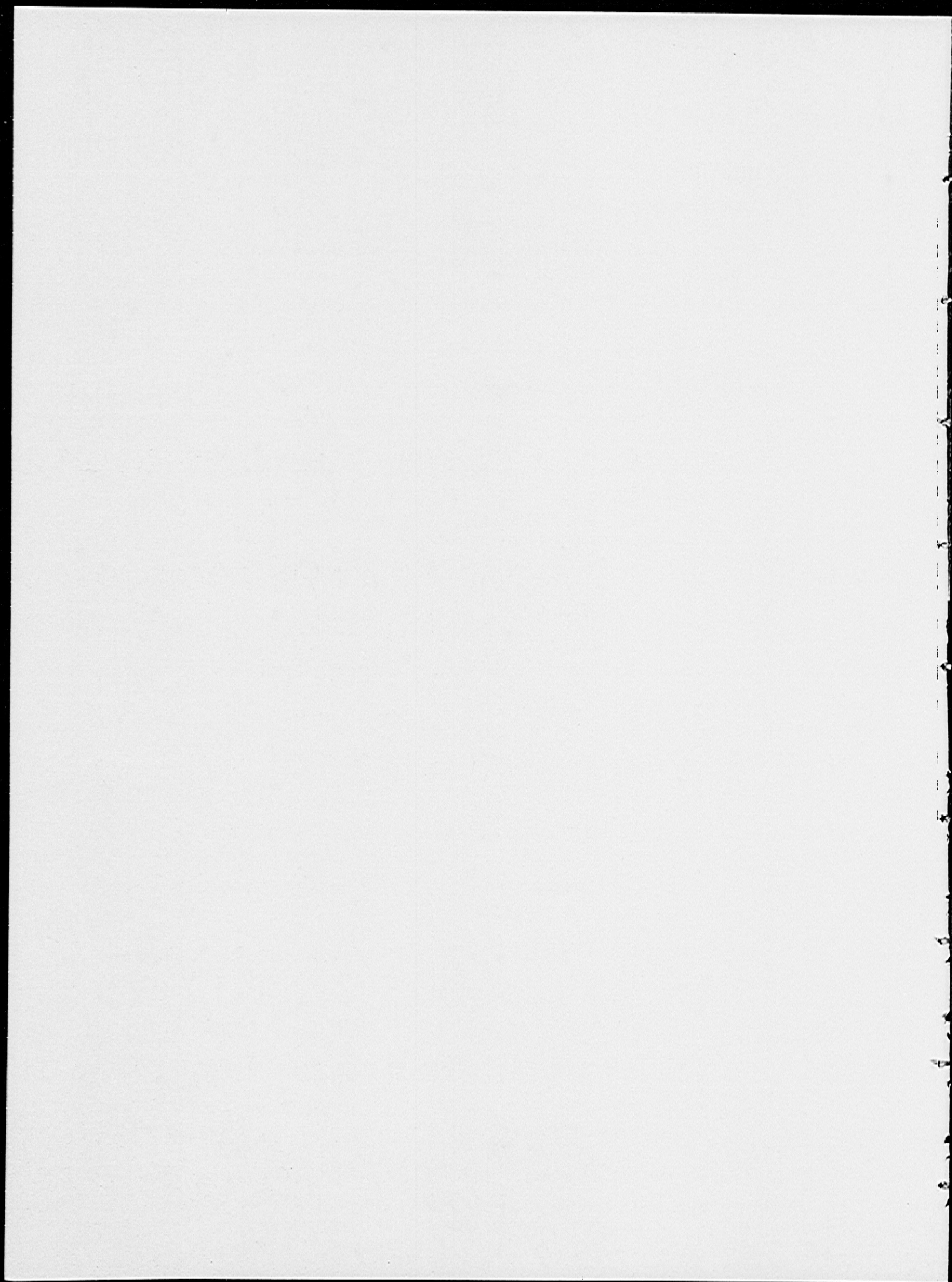
§ 21-1504. Discharge

When a person for whom a conservator has been appointed under this chapter becomes competent to manage his property, he may apply to the court to have the conservator discharged and to be restored to the care and control of his property. If the court

finds him to be competent, it shall enter an order restoring the care and control of his property to him. The court has the same powers with respect to the property of a person for whom a conservator has been appointed as it has with respect to the property of infants under guardianships. (Sept. 14, 1965, 79 Stat. 775, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)

§ 21-1507. Lis pendens

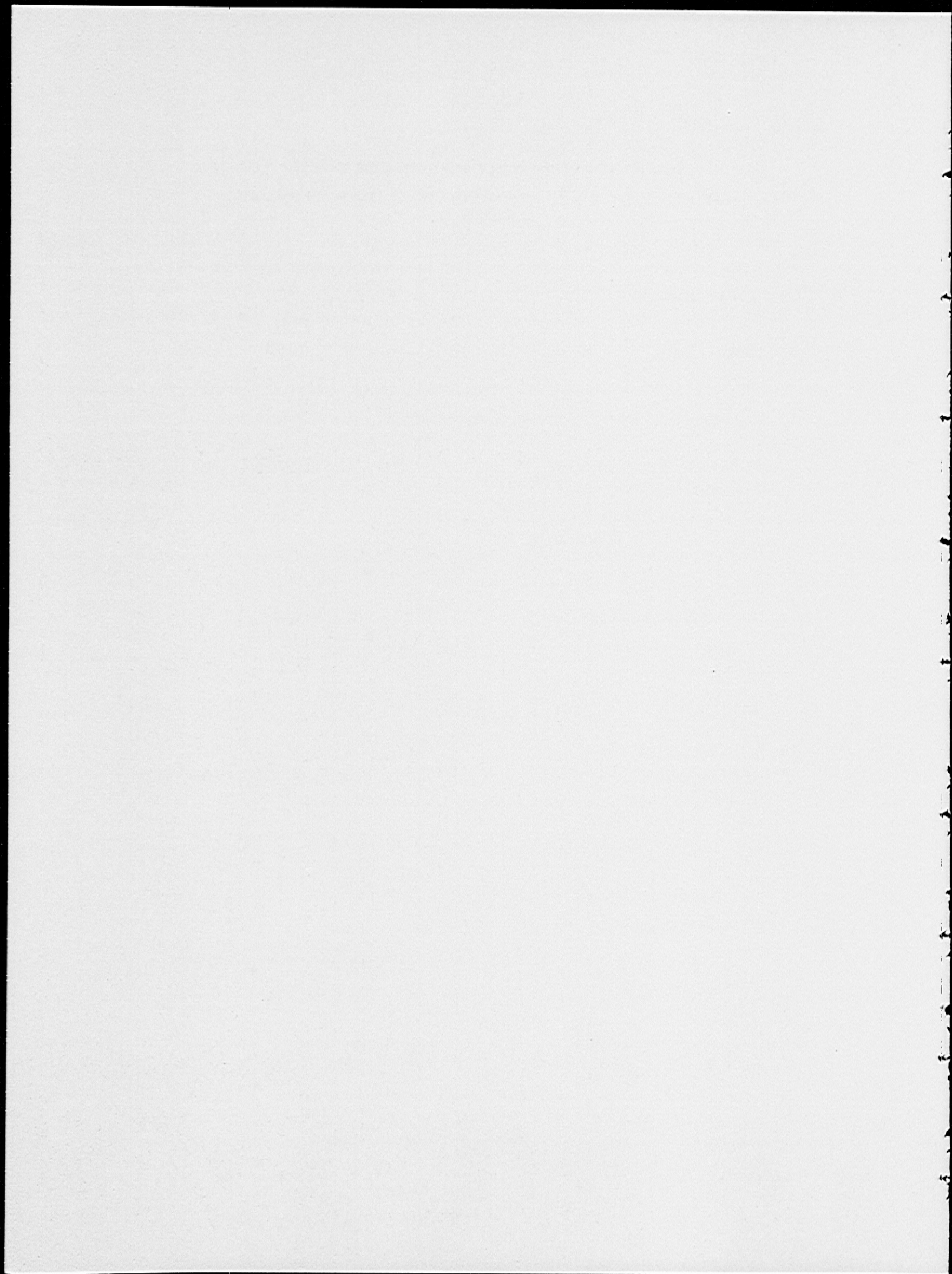
Upon the filing of a petition under this chapter, a certified copy of the petition may be filed for record in the office of the Recorder of Deeds of the District of Columbia. If a conservator is appointed on the petition, all contracts, except for necessities, and all transfers of real and personal property made by the ward after the filing and before the termination of the conservatorship are void. (Sept. 14, 1965, 79 Stat. 775, Pub. L. 89-183, § 1, eff. Jan. 1, 1966.)



(i)

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In re:

BURKE JUSTICE, JR., Civil Action No. 2909-61
Adult Ward.

CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES

Feb. 6, 1968 – Undertaking of Marguerite Justice, successor conservator, in amount of \$7,000. with National Surety Corp. approved, filed.

Feb. 7, 1968 – Appearance of Dorsey Evans for Marguerite J. Justice, Conservator, (918 F Street, N.W.) filed.

Feb. 15, 1968 – Petition of 1st National Bank of Washington for order directing conservator and to pay judgment against ward; c/m 2-15; exhibits A, B & C; M.C., filed.

Feb. 16, 1968 – Petition of conservator to retain an attorney, filed.

Feb. 27, 1968 – Order authorizing conservator to retain Dorsey Evans to defend against petition for order directing conservator to pay judgment against ward, (N) McGUIRE, J.

Mar. 1, 1968 – Sixty Day Report of Marguerite Justice, Successor Conservator under Rule 22, filed.

Mar. 1, 1968 – Petition of successor conservator for leave to expend funds, filed.

Mar. 4, 1968 – Answer and opposition of Conservator to petition for directing conservator to pay judgment against ward; c/m 3/4/68, filed.

Mar. 5, 1968 – Order authorizing expenditures. (N) McGuire, J.

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Mar. 8, 1968 – Report of Auditor, (N) filed.

Mar. 26, 1968 – Memorandum to the Clerk requesting answers as to disability, (N) McGuire, J., filed.

Apr. 4, 1968 – Response of The First National Bank of Washington to Courts memorandum of March 26, 1968; c/m 4/3/68, filed.

Apr. 9, 1968 – Order confirming report of Auditor on sixth account and report, and seventh and final account and report; conservator to file certificate of distribution and settlement after which conservator and surety shall stand discharged. (N) Micro, 4/11/68, Curran, C. J.

Apr. 30, 1968 – Letter from attorney to conservator re checks, filed.

May 3, 1968 – Certificate of Distribution and Settlement of John A. Shorter, Jr., Conservator under Rule 22; Receipt., filed.

May 6, 1968 – Supplemental memorandum of petitioner; c/m 5-3, filed.

May 22, 1968 – Memorandum of conservator; c/m 4-12, filed.

Jun. 6, 1968 – Memorandum denying application for direction asking conservator be directed to pay judgment of bank obtained from the Court of General Sessions. (N) Micro 6/7/68, McGuire, J.

Jun. 24, 1968 – Petition of successor conservator for authority to expend funds.

Jun. 27, 1968 – Order authorizing \$300.00 counsel fee. (N) Micro 6/28/68 Curran, C. J.

Jul. 3, 1968 – Notice of appeal of 1st National Bank of Washington; deposit by Koromzay, \$5.00 (copy mailed to Dorsey Evans.) filed.

Jul. 18, 1968 – Stipulation as to record on appeal, filed.

* * *

[Caption Omitted in Printing]

**PETITION FOR ORDER DIRECTING CONSERVATOR
TO PAY JUDGMENT AGAINST WARD**

Comes now Petitioner The First National Bank of Washington (the "Bank"), by its attorney, and moves the Court for an Order directing the Conservator of the Estate of Burke Justice, Jr., to pay and satisfy out of the conservatorship estate, the judgment entered December 7, 1967 in favor of the Bank and against Burke Justice, Jr., the ward herein, in Civil Action No. GS 14690-66, in the District of Columbia Court of General Sessions, in the amount of \$1,415.00 with interest at the rate of 6% per annum from December 7, 1967, and costs of \$3.00. As grounds for this petition, the Bank states as follows:

1. On December 7, 1967, in Civil Action No. GS 14690-66, in the District of Columbia Court of General Sessions, there was entered a judgment in favor of the Bank and against Burke Justice, Jr., the ward herein, in an amount of \$1,415.00 with interest at the rate of 6% per annum from December 7, 1967, and costs of \$3.00. A certified copy of said judgment is annexed hereto and made a part hereof marked Exhibit A;

2. that the ward Burke Justice, Jr., was at all times represented by counsel in the foregoing proceeding; that the judgment in favor of the Bank entered in said proceeding has not been paid; and that said judgment constitutes a just debt of the ward;

3. that said judgment in favor of the Bank arose out of certain checks wrongfully drawn by the ward Burke Justice, Jr., on his Conservator's account and honored by the Bank, resulting in the Bank's liability therefor to the Conservator;

4. that on January 4, 1968, the Bank paid to the Conservator the amount of \$1,418.00, representing the proceeds of the checks

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honored by the Bank and wrongfully drawn by the ward Burke Justice, Jr., and the Conservator's costs of suit;

5. that by letter dated January 4, 1968, addressed to John A. Shorter, Jr., Esq., Conservator of the Estate of Burke Justice, Jr., demand was made on the Conservator for payment of the Bank's judgment against the ward. A copy of said demand is annexed hereto and made a part hereof marked Exhibit B;

6. that by letter dated January 9, 1968, the Conservator, John Shorter, Jr., refused to pay the Bank's judgment against the ward on the ground that as Conservator of the estate, he considered himself without authority to disburse funds without direction from the Court. A copy of said letter is annexed hereto and made a part hereof marked Exhibit C;

7. that by letter dated January 10, 1968, the Bank's attorney requested the Conservator to petition the Court for the prior direction which the Conservator considered necessary, to pay the ward's debt to the Bank. A copy of said letter is annexed hereto and made a part hereof as Exhibit D;

8. that the Conservator has failed to respond to the Bank's request annexed hereto as Exhibit D;

9. upon information and belief, that there are sufficient assets in the estate to pay the judgment involved, in that;

(a) the Bank paid to the Conservator on January 4, 1968, the amount of \$1,418.00;

(b) upon information and belief, there is a substantial cash balance in the estate in addition to the foregoing amount paid to the conservatorship estate by the Bank;

(c) upon information and belief, the periodic income of the estate exceeds the authorized expenditures;

10. it is within the Conservator's power, and it is the Conservator's duty to pay the ward's just debts out of the ward's estate;

11. equity requires that the ward's debt to the Bank be paid out of the conservatorship estate, in that to refuse payment would reward the ward twice for his own wrongdoing, the ward having already expended the proceeds of the checks drawn by him and his estate having been reimbursed by the Bank in the same amount;

12. the Bank knows of no assets of the ward out of which its judgment against the ward could be satisfied except the conservatorship estate;

13. the ward Burke Justice, Jr., has numerous times passed "bad checks" during a period of several years, and in each instance, with the exception only of the Petitioner, upon information and belief, the Conservator reimbursed the holder of such bad checks out of the conservatorship estate;

14. such other grounds as may be presented at the hearing on this Petition.

Respectfully submitted,

/s/ Dennis T. Koromzay

Attorney for The First National
Bank of Washington

[Certificate of Service Omitted in Printing]

EXHIBIT A

DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

The First National Bank of Washington
(3rd party Pltf.)

vs.

No. GS 14690-66

Burke Justice, Jr. (3rd party def.)

JUDGMENT

Dated December 7, 1967:

Judgment for Plaintiff by trial finding – \$1415.00. Interest on \$1415.00 at 6% per annum from 12-7-67. Costs of suit, \$3.00. Cost of copy, \$0.50.

WITNESS, the Honorable Chief Judge of said Court, this 29th day of December, A.D. 1967.

[Subscription Omitted in Printing]

EXHIBIT B

Dated January 4, 1968:

John A. Shorter, Jr., Esq.
Conservator of the Estate of Burke Justice, Jr.
508 Fifth Street, N.W.
Washington, D.C.

Re: John Shorter, Jr., Conservator of the Estate of Burke
Justice, Jr. v. The First National Bank of Washington Civil
Action No. GS 14690-66.

Dear Mr. Shorter:

As you will recall, on December 7, 1967, in your capacity as Conservator of the Estate of Burke Justice, Jr., you obtained a judgment against The First National Bank of Washington, in the District of Columbia Court of General Sessions, Civil Action No. GS 14690-66, in an amount of \$1,415.00 and costs, on account of the Bank having paid certain checks drawn by Burke Justice, Jr. on the conservatorship account. On the same date, the Bank obtained a judgment against your ward Burke Justice, Jr., in the same amount.

We have today sent to Theodore R. Newman, your counsel in the above proceeding, a cashier's check drawn on The First National Bank of Washington, in the amount of \$1,418.00, in full payment of your judgment against the Bank.

On behalf of the Bank, we are hereby making demand on you, as Conservator of the Estate of Burke Justice, Jr., for payment to the Bank of the sum of \$1,418.00, representing the amount of the Bank's judgment against the ward. Inasmuch as the ward's estate appears to be solvent, and the Bank's judgment against the ward is a just debt of the ward, I trust you will make provision for its payment.

Very truly yours,
Dennis T. Koromzay

cc: Theodore R. Newman, Esq.

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EXHIBIT C

Dated January 9, 1968:

LAW OFFICES
MITCHELL, ELLIS & SHORTER
508 FIFTH STREET, N.W.
WASHINGTON 1, D.C.

Dennis T. Koromzay
MARTIN, WHITFIELD AND THALER
1701 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Re: Estate of Burke Justice, Jr.

Dear Mr. Koromzay:

I have received the check of the First National Bank of Washington in the amount of \$1,418.00.

I have your letter of January 4th, demanding payment to the Bank of \$1,418.00. I do not believe that as conservator of the estate I have authority to disburse funds on demand in the absence of direction from the Court that such action be taken. I, therefore, refer this matter back to you for such further action as you believe appropriate.

In this connection, I invite your attention to the fact that my successor as fiduciary of this estate will be appointed in District Court on January 10th.

Very truly yours,

/s/ John A. Shorter, Jr.

cc: Theodore R. Newman, Esquire

BA/dr

EXHIBIT D

Dated January 10, 1968:

John A. Shorter, Jr., Esq.
Mitchell, Ellis & Shorter
508 Fifth Street, N.W.
Washington, D.C.

Re: FNB—Estate of Burke Justice, Jr.

Dear Mr. Shorter;

I have your letter of January 9, 1968, advising us of your belief that as conservator of the estate, you have no authority to disburse funds on demand in the absence of direction from the Court that such action be taken, and referring the matter back to us for such further action as we believe appropriate.

Assuming, without conceding, that you lack such authority, I believe nevertheless that as conservator, you have both the power and duty to pay the ward's just debts, out of funds subject to your control. If you consider yourself without authority to pay the debt involved without prior direction from the Court, then I would request that you petition the Court for such prior direction. In this connection, I note that you have, as conservator, done so on several other occasions. I note further that in the course of your conservatorship, you have from time to time redeemed bad checks drawn by the ward, and as I recall, without prior direction from the Court, and have subsequently petitioned the Court for ratification of such expenditures. You have also from time to time petitioned the Court for ratification of various other expenditures made without prior direction of the Court.

Please advise us whether you will petition the Court for a direction to pay the debt involved, and if so, when your petition will be heard, so that we may be present to answer any questions which

may arise. If not, we will appreciate your advising us as to your reasons.

In the event a successor fiduciary is appointed by the Court and assumes his office before action may be taken with respect to this request, please consider this letter as addressed to your successor, and kindly transmit the same to him.

I will appreciate your consideration of this request at your early convenience.

Very truly yours,

Dennis T. Koromzay

cc: Theodore R. Newman, Esq.

Filed Mar. 5, 1968:

[Caption Omitted in Printing]

**ANSWER AND OPPOSITION TO PETITION
FOR ORDER DIRECTING CONSERVATOR TO
PAY JUDGMENT AGAINST WARD**

Comes now Marguerite Justice, Successor Conservator of the above named Adult Ward by ~~the~~ through counsel, Dorsey Evans, and for answer to the Petition filed herein, submits the following:

1. That the judgment in question is one in which the Bank has admitted negligence in allowing said judgment to come into existence.
2. That the Bank allowed the Adult Ward involved in this matter, Burke Justice, Jr., to draw money on the Conservator's Account; obviously, the Adult Ward has been found not to be competent and this is the reason for the account in the first place.
3. That the funds in the Conservator's account are specifically there to provide welfare for the Adult Ward and his family; that if

the Bank was allowed to collect from the Conservator's account because of its own negligence, the family would suffer.

4. That most of the funds in the Conservator's account are derived from the Veterans Administration Benefits and the law specifically provides what these funds are to be used for; that said funds are not to be used to pay for negligent conduct of the Bank, as it has admitted in this matter.

5. And for such other and further reasons as would be raised at a hearing on this matter.

WHEREFORE, the premises considered, it is prayed that the "Petition" be denied or dismissed.

/s/ Dorsey Evans

* * *

[Certificate of Service Omitted in Printing]

Filed March 26, 1968:

[Caption Omitted in Printing]

**MEMORANDUM TO THE CLERK ADDRESSED
TO THE ATTENTION OF COUNSEL FOR
PETITIONER AND RESPONDENT**

If the facts as recited in the petition are correct and they presumably are, the Court would like to have this question answered: How can a judgment be secured against an incompetent in the circumstances alleged here, and if it can be secured through inadvertence or mistake, how can it be enforced?

It appears that in the petition for appointment of a conservator filed September 21, 1961, the individual in question is a veteran of

military service in World War II rated incompetent by the Veterans Administration February 9, 1961 on the basis of a diagnosis of "schizophrenic reaction, and by reason thereof he is incapable of managing his affairs."

Further, the record indicates on October 3, 1961 Judge McGaraghy appointed John Shorter, Esquire, to be conservator of the estate in question. This order indicates he was receiving disability compensation from the Veterans Administration in the amount of \$225.00 monthly.

The Court would like to have the question as to the nature of the disability answered.

[Subscription Omitted in Printing]

Mailed for Filing April 3, 1968:

[Caption Omitted in Printing]

**RESPONSE OF PETITIONER
THE FIRST NATIONAL BANK OF WASHINGTON
TO THE COURT'S MEMORANDUM TO THE CLERK
DATED MARCH 26, 1968**

In response to the Court's question regarding how a judgment can be secured against an incompetent, Petitioner The First National Bank of Washington, by its counsel respectfully directs the Court's attention to Section 1507, Title 21, District of Columbia Code, which provides as follows:

"Upon the filing of a petition under this chapter, a certified copy of the petition may be filed for record in the office of the Recorder of Deeds of the Dis-

trict of Columbia. If a conservator is appointed on the petition, all contracts, except for necessities, and all transfers of real and personal property made by the ward after the filing and before the termination of the conservatorship are void."

In the case of Burke Justice, Jr., no petition was filed with the Recorder of Deeds in accordance with the foregoing provision, and for this reason, the ward's contracts were fully enforceable. The District of Columbia Court of Appeals so concluded in the case of *Edmunds v. Equitable Savings and Loan Association*, D.C. App. No. 3936, 94 Wash. Law. Rep., page 2033 (November 14, 1966), finding that the Maryland statute (almost a verbatim copy of the District of Columbia statute) speaks in terms of "inability" rather than "incompetency," and that there was absent any language indicating that the appointment of a Conservator *ipso facto* relieves the ward of his capacity to contract. If a ward's contracts are enforceable, judgments may be entered with respect to such contracts. *A fortiori*, it appears, the appointment of a conservator does not *ipso facto* absolve a ward of responsibility for his crimes or torts. Additionally, Petitioner would point out that the ward Burke Justice, Jr., at all times was represented by counsel appointed by this Court for the specific purpose of representing his interest in the proceeding in which Petitioner's judgment against the ward was secured.

Although Petitioner is not specifically informed regarding the ward's disability, the Petitioner would point out that there has been no legal adjudication of insanity. Additionally, the ward appears to have had the presence of mind to draw and negotiate at least fifteen bad checks, and to expend the proceeds for his own and in some instances, it appears, his family's purposes. In other words, the ward's actions do not suggest the lack of mental presence which would justify a finding that he did not know the nature of his actions and therefore that he should not be held responsible even if

an inquiry into such matters would not be foreclosed by the judgment finally entered. Of course, the judgment forecloses such inquiry.

The question of enforcement of judgments against incompetents has apparently not been considered in this jurisdiction. The Petitioner suggests that in light of the statute in the District of Columbia authorizing conservatorships, and in light of the jurisdiction of the United States District Court to approve settlement of the ward's debts (Section 1503, Title 21, District of Columbia Code), a proper procedure for enforcement is by application to the United States District Court. The Court, in turn, should authorize payment to be made, reserving, however, sufficient maintenance for the ward and his family. In the facts of this case, it is submitted, payment may be made in full without depriving the ward and his family of sufficient maintenance, since the income of the estate exceeds by a substantial margin the authorized expenditures, and the cash balance is sufficient for payment of this debt.

Petitioner would also direct the Court's attention to the case of *William E. Summerbell v. W. Barrett McDonnell*, 167 A.2d 150 (D.C. App. 1964), in which the District of Columbia Court of Appeals construed Section 1503, Title 21, District of Columbia Code, to authorize a creditor to maintain a suit in equity against a Conservator to reach the ward's estate. If suit may be maintained against the Conservator, it would appear that the Conservator may be required to pay the creditor out of the ward's estate. Pursuant to Section 1503, Title 21 of the District of Columbia Code, the United States District Court would have the jurisdiction to order such payment.

/s/ Dennis T. Koromzay

[Subscription Omitted in Printing]

[Certificate of Service Omitted in Printing]

[Caption Omitted in Printing]

MEMORANDUM

Dated April 12, 1968:

The response of respondent, Marguerite Justice, Conservator of the Estate of Burke Justice, Jr., by and through her Attorney Dorsey Evans, submits the following in answer to the inquiries submitted by the Court dated March 26, 1968.

1. It would appear that Title 21, Section 1501 of the District of Columbia Code and the following sections within that Title were enacted for the specific purpose to protect the property of persons unable to properly care for the same. It would further appear that this Title was specifically designed to protect "Burke Justice, Jr.", the ward herein and his property.

2. That if judgment was allowed to be enforced against Mr. Justice in this action, Title 21 would have absolutely no meaning and no purpose on the books.

The real problem presented at this point seems to be that there has been no other decision on this exact problem. However, in examining Title 21 carefully, we note that the legislators included language that:

"Upon the filing of a petition under this chapter, a copy of the petition may be filed for record in the office of the Recorder of Deeds of the District of Columbia. If a conservator is appointed on the petition, all contracts, except for necessities, and all transfers of real and personal property made by the ward after the filing and before the termination of the conservatorship are void."

§ 21-1507. *Lis Pendens.*

This, when broken down, would mean that the legislators intended for all contracts, except for necessities, and all transfers of real and personal property made by the Ward after the *mere* filing of an action for conservatorship and even while said action is waiting for a conservator to be appointed, all such acts are *void*. It is noteworthy to point out that the language does not say voidable, or may be void, but specifically states that they are "*void*".

3. It might be well to point out that the cases cited by the petitioner in this matter—"William E. Summerbell v. W. Barrett McDonnell", 197 A.2d 150 (D.C. App. 1964), and "Edmunds v. Equitable Savings and Loan Association", D.C. App. No. 3936, we concern themselves only with the question of judgments against conservators; such judgments are allowable if the contract is considered to be one of necessities, or within the discretion of the Court, it may decide that such a judgment should be allowed.

But on the otherhand, Title 21 of the District of Columbia Code is clear that except for necessities, all other transfers of property, etc. are *void*.

4. It would appear then that the judgment secured against the incompetent herein, must have been done so through inadvertance or mistake and without due consideration of the statute involved. To allow such a judgment to be enforced would appear to be doing so without statutory authority.

WHEREFORE, the premises considered, respondent, Marguerite Justice, Conservator of the Estate of Burke Justice, Jr., Adult Ward herein, respectfully prays that the Petition be denied.

/s/ Dorsey Evans

[Certificate of Service Omitted in Printing]

[Caption omitted in printing]

SUPPLEMENTAL MEMORANDUM

Dated May 3, 1968:

Petitioner The First National Bank of Washington, by its counsel, respectfully submits to the Court the following additional points in opposition to the Memorandum, filed herein on April 12, 1968, of Respondent Marguerite Justice, which Memorandum is misleading in several material respects:

1. Respondent's Memorandum relies on Section 1507, Title 21 of the District of Columbia Code to avoid the effect of the Bank's judgment obtained against the ward. Her argument, however, is predicated on the assumption that a *lis pendens* was filed in accordance with the statute. In point of fact, *no lis pendens was filed*, and the Respondent has resorted to the extraordinary expedient of failing so to state, with the result that her Memorandum conveys the misleading impression that the provision involved is applicable to the facts of this case. Petitioner will concede that had a *lis pendens* been filed, the ward's contracts, except for necessities, would have been void. However, *no lis pendens* was filed, and since the statutory procedure to avoid improvident contracts of wards was not followed, it follows that the contracts of Burke Justice, Jr. were fully enforceable. Moreover, of course, even if a *lis pendens* had been filed, with the effect of voiding all contracts of the ward except for necessities, such *lis pendens* would not *ipso facto* have affected Burke Justice's responsibility for his torts. Wards and infants cannot avoid responsibility for their torts, merely by reason of their status as such. Burke Justice, Jr., having wrongfully converted the funds in question, was fully subject to a judgment requiring him to make restitution.

2. Respondent's Memorandum dismisses the relevance of the two cases cited by the Petitioner by stating that these cases "concern themselves only with the question of judgments against conservators." This is simply inaccurate. The *Edmonds* case involved precisely the enforceability of a contract entered into by a ward for whom a conservatrix had been appointed. The Court in that case specifically upheld the ward's right to withdraw moneys from her (the ward's) account although the institution in which the account was maintained had actual notice of the appointment of a conservatrix, and the Court there held that the failure to file a *lis pendens* was fatal to the conservatrix's petition to have the funds withdrawn by the ward restored to the account. The case of *Summerbell* was cited by the Petitioner to support its contention that a ward's estate may be reached by action against the conservator. This is precisely what Petitioner is doing in this proceeding.

The conclusion, therefore, must be exactly contrary to the conclusion stated in Respondent's Memorandum. Since no *lis pendens* was filed, Burke Justice's contracts, whether for necessities or otherwise, were fully enforceable and judgment could have been entered with respect thereto. Judgment was in fact entered, and was done so not through inadvertance or mistake, but upon consideration of all relevant questions involved, the ward having at all times been represented. The only proper consideration remaining is whether the judgment may be paid without depriving the ward and his family a sufficient maintenance. In the case of Burke Justice, Jr., there are apparently sufficient funds. This Court has the authority, pursuant to Section 21-1503 of the District of Columbia Code, to require payment.

3. Although it appears there are no reported decisions in the District of Columbia regarding the enforcement of judgments against wards, Petitioner respectfully directs the Court's attention to the

following statement found in Section 78 of 25 Am. Jur, GUARDIAN AND WARD:

"In most jurisdictions the property of an infant or incompetent under guardianship is not subject to attachment or garnishment, but the proper course to pursue where one has a claim or judgment against the estate of a ward is to apply to the court having jurisdiction for payment thereof. Usually, however, the court before making an order for the payment of debts or allowing to a committee or guardian sums already applied by him to that purpose will reserve a sufficient maintenance for the ward."

Reference is also made to Section 156 of 25 Am. Jur. GUARDIAN AND WARD:

" . . . In jurisdictions in which this rule prevails [that property of an infant or incompetent under guardianship is in custody of the law, and therefore not subject to execution], a judgment against an incompetent or infant under guardianship can be enforced only through the Court, and not by process either against the ward's estate or the guardian. Payment of the judgment may depend upon various contingencies, such as whether the estate has available money or the need for procuring it from personal assets or real estate, or whether the estate is sufficient to pay all or only a portion of the liabilities and debts of the ward."

A rule which would deny the right of creditors to be paid out of a ward's estate would result in the unjust enrichment of wards and injustice to creditors. The only limitation, it is submitted, is that sufficient maintenance for the ward should be reserved. With this objective in mind, no conceivable frustration would result to the

policies contained in the statutory provisions regarding appointment of conservators.

Respectfully submitted,

/s/ Dennis T. Koromzay

[Certificate of Service Omitted in Printing]

Filed June 6, 1968:

[Caption Omitted in Printing]

MEMORANDUM TO THE CLERK

This Court has no authority to open or vacate a judgment of the Court of General Sessions of the District of Columbia, but it has authority of a plenary and continuing character over the conservatorship and the conservator.

On the facts of this case, the application for direction asking that the conservator be directed to pay the judgment of the bank obtained from the Court of General Sessions against the ward is denied.

Order accordingly.

/s/ Matthew F. McGuire

Filed July 3, 1968:

[Caption Omitted in Printing]

NOTICE OF APPEAL

Notice is hereby given this 3rd day of July, 1968, that The First National Bank of Washington hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 6th day of June, 1968 in favor of Marguerite Justice, Successor Conservator of the estate of Burke Justice, Jr., Adult Ward, against said The First National Bank of Washington.

/s/ Dennis T. Koromzay

[Certificate of Service Omitted in Printing]

[Caption Omitted in Printing]

STIPULATION AS TO RECORD ON APPEAL

It is hereby stipulated by the parties hereto, by and through their respective attorneys, that the record on appeal herein, with respect to the appeal of The First National Bank of Washington from the judgment entered herein on the sixth day of June, 1968 in favor of Marguerite Justice, Successor Conservator of the Estate of Burke Justice, Jr., shall consist of the Bank's Petition filed herein on February 15, 1968 with Exhibits attached thereto, and all papers filed in this proceeding subsequent to February 15, 1968 to and including the Order entered herein on June 6, 1968, captioned "Memorandum to the Clerk." All other papers filed in this proceeding are not

deemed necessary for the determination of the appeal and may be omitted from the record on appeal.

/s/ Dennis T. Koromzay

/s/ Dorsey Evans

[Caption Omitted in printing]

REPORT OF THE AUDITOR

On Sixth Account and Report and the Seventh-and-Final Account and Report filed November 27, 1967 and January 6, 1968, respectively, of John A. Shorter, Jr., Conservator.

To the United States District Court for the District of Columbia:

In compliance with Rule 22, the Auditor respectfully reports as follows:

1. Court order filed December 4, 1967 allowed John A. Shorter, Jr., to resign as Conservator of the estate of Burke Justice, Jr., upon approval of his final account. Thereafter, Court order of January 26, 1968 appointed Marguerite Justice, wife of the Adult Ward, Successor Conservator of the said Burke Justice, Jr., upon filing an undertaking in the penalty of \$7,000.00.

2. Said account, covering the period from October 11, 1966 through December 31, 1967, has been audited and is revised to show the correct beginning and ending balances as follows:

Dr.

Balance per Auditor's Report filed April 25, 1967 -	\$2,719.83	
Veterans Administration benefits for the calendar months of October 1966 through November 1967 14 months at \$381.00	5,334.00	

Cr.

Burke Justice, Jr., for maintenance and support of himself and family, per Court order of August 6, 1963, which authorized the sum of \$260.00 per month-	3,045.00	
For Christmas funds for the Ward and his family per Court orders of December 15, 1966 and December 13, 1967 -	500.00	
Automobile repairs, per Court order of April 24, 1967 -	126.22	
Clothing for Ward's children per Court order of April 24, 1967 -	90.00	\$3,761.22
McBrides, clothing for Ward's children per Court order of December 4, 1967 -		157.13
Lustine Realty, rent for the period November 1, 1966 through December 31, 1967 on Ward's resi- dence at 401 K Street, N.W., 13 months at \$100.00 per Court order of August 6, 1963 -		1,300.00
John A. Shorter, Conservator's commission -		432.23

Glens Falls Group, bond premiums —		120.00
Auditor's charge re prior report —		45.00
Balance held for future accounting as of December 31, 1967 —		<u>2,238.25</u>
TOTAL	<u>\$8,053.83</u>	<u>\$8,053.83</u>

3. The foregoing balance held for future accounting consists of the following:

Cash on deposit with the First National Bank of Washington, checking account	\$ 593.73
Claim against the First National Bank of Washington for unauthorized withdrawals made by the Ward (see paragraph 5 hereof)	<u>1,644.50</u>
	<u>\$2,238.25</u>

4. In addition to the foregoing, the Adult Ward owns or may be entitled to the following:

The Auditor has been informed that Mr. Shorter was notified by the Social Security Administration in October, 1967 that they had decided to pay the wife of the Ward directly for herself, the Ward, and their minor children.

\$10,000.00 Veterans Administration 20-payment life insurance policy No. RH 17 9182 01, on which premiums have been waived due to disability. The Veterans Administration informed the Auditor that a series of loans have been made against the aforementioned insurance policy, directly to the insured.

The total amount of said loans made subsequent to the appointment of the Conservator is \$720.75. It is the opinion of the Auditor that since the above loans were made subsequent to the appointment of the Conservator; without knowledge or sanction of the Court, it is questionable whether or not the estate or the subsequent beneficiaries of the estate should suffer the accruing interest on the total of the loans of the principal of the loans made subsequent to the appointment of the Conservator.

5. As shown in paragraph 3 above, the balance for future accounting includes a claim against the First National Bank of Washington for \$1,644.50, representing unauthorized withdrawals made by the Ward herein. By Court order of June 3, 1963, the Conservator was authorized to employ an attorney to represent him in said matter. The Auditor notes that Theodore R. Newman, Jr., Esq., was retained by the Conservator and that he filed a suit against said bank which resulted in the entry of judgment on December 8, 1967 against said bank in favor of this estate in the sum of \$1,415.00 and costs. Said judgment has been paid in full and will be included as part of the assets to be turned over by the Conservator to the Successor Conservator.

6. The Conservator's account and report show no real estate or other personal property owned by the Ward.

7. The undertaking of the Conservator is in the penalty of \$6,000.00. The undertaking of the Successor Conservator filed February 6, 1968 is in the penalty of \$7,000.00 and is sufficient.

8. The amount on deposit as of December 31, 1967, the closing date of the account, was found to be \$593.75, which agrees with the total amount on deposit for which the Conservator is found accountable in paragraph 3 hereof.

9. The Auditor recommends that said account be approved, as revised, and that the Conservator be allowed the following items:

Commission, 5 per cent of \$5,815.58 collected and disbursed —	\$290.78
Less advance on commissions taken by the Conservator on November 27, 1967 —	232.17
Commission due the Conservator —	\$58.61
Auditing charge for auditing and revising said accounts and for this report to the Court including \$4.00 for verifying deposits as provided by Rule 22(d) —	\$89.00

10. After payment of the foregoing items totaling \$147.61, there will remain a balance of \$1,864.14, consisting of cash on deposit of \$446.14 and the sum of \$1,418.00 received subsequent to the closing date of the account representing payment of a judgment against The First National Bank of Washington in satisfaction of the Conservator's claim against said Bank in the amount of \$1,644.50, plus any subsequent collections to be disbursed and turned over by the Conservator to Marguerite Justice, Successor Conservator.

11. After confirmation of the Report of the Auditor, Order to be prepared and presented by the Conservator, and after full settlement and distribution has been made and a verified statement to that effect filed by the Conservator with the Clerk of the Court, as provided by Rule 22(g), together with vouchers, receipts or canceled checks evidencing final distribution, the Auditor recommends that the Conservator and his surety stand discharged, except as to prior defaults, if any.

12. Copies of this Report have been mailed to all parties listed in paragraph 13 below.

13. The Clerk of the Court has been furnished with notices of the filing of this Report to be mailed to the following:

John A. Shorter, Jr., Esq.
508 Fifth Street, N.W.
Washington, D.C. 20001

Theodore R. Newman, Esq.
635 F Street, N.W.
Washington, D.C. 20004

Veterans Administration
2033 M Street, N.W.
Washington, D.C. 20421

Edgar T. Bellinger, Esq.,
Suite 700,
888 - 17th Street, N.W.
Washington, D.C. 20006

Dennis T. Koromzay, Esq.,
1701 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Marguerite Justice,
c/o Dorsey Evans, Esq.,

Dorsey Evans, Esq.,
918 F Street, N.W.
Suite 208,
Washington, D.C.

Respectfully submitted,

JOHN W. FOLLIN
Auditor

United States Court of Appeals
for the District of Columbia Circuit

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

FILED FEB 17 1969

Nathan J. Paulson
CLERK

IN RE:

BURKE JUSTICE, JR.,

Adult Ward

:

:

NO. 22,195

:

APPEAL FROM AN ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

DORSEY EVANS
1025 Connecticut Avenue, N.W.
Suite 711
Washington, D. C. 20036
Attorney For Appellee,
Margaret Justice, Successor,
Conservator

February 17, 1969

QUESTION PRESENTED

In the opinion of appellee, the question presented is whether, after considering the record, as a whole, the District Court abused its discretion in denying appellant's "Petition For Order Directing Conservator to Pay Judgment Against Ward".

*This case has not previously been before
this Court.*

ARGUMENT

The District Court's ruling, denying appellant's "Petition For Order Directing Conservator To Pay Judgment Against Ward" is supported by the record and is not an abuse of discretion.

A. In support of this conclusion, let us first establish that it is within the discretion of the District Court to allow or deny such a Petition. Section 21-1502, District of Columbia Code (1967 Edition), authorizing the appointment of a Conservator by the District Court, states that said Conservator "Shall have the charge and management of the property of the person (ie) Ward subject to the direction of the Court."

This lanaguage seems clear and unambiguous in establishing the fact that the District Court shall and must have discretion in order for the statute to operate effectively.

Appellant's brief seems to justify this point in all of its arguments including the holding in the Shoemaker, et al vs. Bohrosen, et al, 217 Iowa 34 Case. However, appellant suggest that the Court abused this discretion.

B. In examining the question of abuse of discretion, let us first note that Title 21 - 1507 states that

"Upon the filing of a Petition under this Chapter, a copy of the Petition may be filed for the record in the office of the Recorder of Deeds of the District of Columbia. If a Conservator is appointed on a Petition, all contracts, except for necessary and all transfers of real and personal property made by the Ward after the filing and before the termination of the Conservatorship of are void."

The legislator's choice of the word may with reference to filing a copy of the Petition with the Recorder of Deeds for the District of Columbia, indicates that there was no intention to require such a petition to be filed with the Recorder of Deeds before "Lis pendens" is effective.

It seems clear that the intent of this section is to make void all contracts, except for necessary and all transfers of real and personal property made by the Ward after the mere filing of a petition under this chapter.

There is no question that not only was a petition filed for the appointment of a Conservator at the time this controversy arose but that a Conservator was actually appointed and qualified which would indicate that "Lis pendens" was in effect.

Next we note that this section of the Statute points out that all contracts, except for necessities, etc. are void. Certainly, in a situation such as this, it is up to the

District Court to decide what is and what is not necessities. The record contains no statement as to whether the acts of the Ward in obtaining this money from the Conservator's account or the purpose for which the money was used was necessary. The record being void of such evidence would certainly indicate that the District Court did not abuse its discretion in denying appellant's petition.

Appellant, in its brief, (page 6) indicates that

"The Ward had previously drawn bad checks, and that in each instance the Conservator made restitution to the holders thereof with prior and/or subsequent approval of the District Court."

It is interesting to note that in each instance of these previously drawn bad checks, it appeared that the money was used to purchase necessities. It is pointed out that checks were redeemed from A & P Supermarket, where obviously food for the Ward and/or his family was purchased, and checks were also redeemed from Bolling Air Force Exchange Base and U. S. Treasurer at the Bolling Air Force Base which also suggest that food or personal items for the Ward or his family were purchased which, can certainly, be considered as necessities.

If the District Court had allowed appellant to collect on the judgment against the Ward, it would be doing indirectly what the Statute prohibits being done directly. In other words, the District Court would allow Wards to receive money

from the Conservator's account, spend it for whatever irresponsible purpose they choose to and then permit the bank to collect the same funds from the Ward's Estate merely because (if that be the case), the Estate has sufficient funds to cover the disbursement. If this were allowed, Title 21, Chapter 15 of the District of Columbia Code would have absolutely no meaning and no purpose for existence.

C. Appellant also states that there was sufficient funds in the Ward's Estate in which to satisfy the judgment at the time the Petition was filed. Even if this were so, Burke Justice, Jr., the Adult Ward, is married, lives with his wife, and is the father of seven children. The family is living in a two bedroom apartment, with furniture that was either given to them or purchased at a used furniture store. The entire family is in need of more living space, furniture, shoes, and proper clothing. All funds received through benefits by this Ward are not enough to establish proper health and welfare for the family.

With reference to the allegation that the Ward owns a car, it is well to note that \$50.00 was given to a soldier who was leaving this country for overseas duty and the car was turned over to the Ward with the provision that he pay \$65.00 a month notes. A family with seven children and a sickly wife, where trips back and forth to the Veterans

Administration Hospital for treatment is frequently necessary, a car is a necessity.

This office has been unable to find any material case law on point and submits this argument in lieu thereof.

C O N C L U S I O N

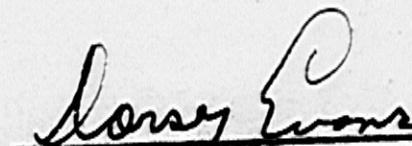
In examining this matter and the record as a whole, there appears to be no law or equity which would allow such a judgment to be collected from the Estate of the Ward. It further appears and seems quite difficult to understand how the bank in this situation could honor check after check of the Ward drawn on his Conservator's account, and because of their error, pay the money back into the Conservator's account, then turn around and sue the Ward, get a Judgment and take the same money right back out of the same account without being blocked by the effects and intent of Title 21, Chapter 15 of the District of Columbia Code. Consequently, it would appear that the District Court did not abuse its discretion and is justified in denying Appellant's "Petition For Order Directing Conservator To Pay Judgment Against Ward."

WHEREFORE, the premises considered it is respectfully

requested that the ruling of the lower Court be affirmed.

Dated: February 17, 1969.

Respectfully Submitted,



DORSEY EVANS
Attorney for Appellee,
Margaret Justice, Successor,
Conservator
1025 Connecticut Avenue, N. W.
Suite 711
Washington, D. C. 20036
659-4343

CERTIFICATE OF MAILING

A copy of this Brief was mailed to the Attorney for
appellant, Dennis Koromzay, Esquire, 1701 Pennsylvania
Avenue, N. W., Washington, D. C., postage prepaid, this
17th day of February, 1969.